

COUNTY OF ERIE
LOCAL LAW NO. _____ - 2002
LOCAL LAW INTRO. NO. 8 – 2002

A LOCAL LAW in relation to N.Y. County Law Section 224-a concerning a voluntary registry to notify interested citizens of Erie County regarding commercial pesticide applications on abutting property for the elimination of noxious weeds.

BE IT ENACTED BY THE LEGISLATURE OF ERIE COUNTY AS FOLLOWS:

Section 1. Title

This law shall be known as the Erie County Pesticide Notification Registry (hereinafter “registry”).

Section 2. Legislative Intent.

The Erie County Legislature hereby finds that the citizens of Erie County and their personal property can come into unintentional contact with pesticides from commercial lawn applications on abutting property. Various citizens have expressed a desire to receive notification from commercial lawn applicators prior to pesticide applications on abutting property. The intent of this local law is to provide adequate information to those interested county residents who wish to receive notification of pesticide applications so that they can take whatever steps they deem necessary to minimize any unintended contact. Accordingly, this Legislature hereby adopts a voluntary registry for notification of pesticide applications by commercial lawn applicators to citizens wishing such notification.

Section 3: Definitions.

- a. “Abutting property” means any property that has any boundary or boundary point in common with the property on which a pesticide is to be applied.
- b. “Agency” means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.
- c. “Commercial lawn application” means the application of a general use pesticide to the ground, trees, or shrubs on public or private outdoor property. For the purposes of this local law the following shall not be considered a commercial lawn application:
 - (1) the application of pesticides for the purpose of producing an agricultural commodity;

- (2) residential application of pesticides;
- (3) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- (4) the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one-hundred feet of a dwelling, multiple dwelling, public building, or public park; and
- (5) the application of pesticides on golf courses or turf farms.

d. "General use pesticide" means any pesticide that does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the New York Environmental Conservation Law.

e. "Not-for-profit agency" means any agency which meets the requirements of not-for-profit status by the US Treasury under Section 501(c)(3) of the United States Internal Revenue Code.

f. "Pesticide" means:

- (1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and
- (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

g. "Residential lawn application" means the application of a general use pesticide to the ground, trees, or shrubs on property owned by or leased to the individual making such application. For the purposes of this local law, the following shall not be considered a residential lawn application:

- (1) the application of pesticides for the purpose of producing an agricultural commodity;
- (2) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- (3) the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and
- (4) the application of pesticides on golf courses or turf farms.

Section 4. Notification Requirements.

a. Retail Consumer Information Sign.

- (1) All retail establishments that sell general use pesticides for commercial and/or residential lawn application shall display a

sign meeting the standards established by the Commissioner of the Erie County Department of Health pursuant to rules and regulations promulgated under Section 7 of this local law.

b. Establishment of the Erie County Pesticide Notification Registry.

- (1) Erie County by itself or through a designated not-for-profit agency shall establish a voluntary registry for notification to interested citizens when a commercial lawn application of a general use pesticide is performed on abutting property with a boundary that is within one hundred seventy-five (175) feet of the site of such application.
- (2) On or about February 1, 2003 and on or about February 1 of each and succeeding year after the adoption of this local law, Erie County or its designated not-for-profit agency shall contact all residence addresses within Erie County by U.S. mail, providing a registration form to solicit those who wish to be included within the registry.
- (3) The registration form will provide for the registrant's name, address, telephone number, fax number, and electronic mail (e-mail) address. Those citizens interested in receiving prior notification shall return the form for inclusion in the registry.
- (4) Erie County or its designated not-for-profit agency shall also establish a phone number and link at its website that interested residents can contact for inclusion in the registry.
- (5) Erie County or its designated not-for-profit agency will maintain the registry, and the local lawn care industry will use the registry to notify registered residents of commercial lawn applications of a general use pesticide on abutting property with a boundary that is within one hundred seventy-five (175) feet of the site of such application.
- (6) Erie County or its designated not-for-profit agency, and the local lawn care industry shall jointly place advertisements in newspapers and on radio and television to notify residents of the existence of the registry.
- (7) Erie County or its designated not-for-profit agency, and the local lawn care industry shall jointly publish brochures and other advisory materials to notify residents of the existence of the registry.

c. Implementation of the Erie County Pesticide Notification Registry.

- (1) The registry will require that commercial lawn applicators provide forty-eight (48) hours prior notice of general use pesticide applications to residents requesting notification and

living on abutting property with a boundary that is within one hundred seventy-five (175) feet of the site of such application.

- (2) Notice shall be by a manner specified by the registrant in the registry, which may include:
 - (a) written notice; or
 - (b) telephone call; or
 - (c) fax; or
 - (d) e-mail; or
 - (e) personal notification.
- (3) In the situation where no contact has been made with the registrant, the commercial lawn applicator shall make a personal visit to the registrant's residence at least 12 hours before the commercial lawn application.
- (4) The expense of notifying registrants shall be the sole responsibility of the local lawn care industry.
- (5) Such prior notification provisions shall not apply to the following:
 - (a) the application of anti-microbial pesticides and anti-microbial products as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);
 - (b) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;
 - (c) the use of non-volatile insect or rodent bait in a tamper resistant container;
 - (d) the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;
 - (e) the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;
 - (f) the use of boric acid and disodium octaborate tetrahydrate;

- (g) the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;
- (h) the application of a pesticide to the ground or turf of any cemetery; and
- (i) an emergency application of a pesticide when necessary to protect against any imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the prior notice required pursuant to this title.

Section 5. Enforcement.

a. The Erie County Department of Health shall enforce the provisions of this local law administratively through itself or upon referral from the designated not-for-profit agency provided that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in Section 6 of this law.

Section 6. Penalties.

a. Administrative Sanctions

- (1) A person or business providing a commercial lawn application of a general use pesticide or any other person or business that violates any provision of this local law shall be assessed a written warning for a first offense, a fine in the amount of two hundred fifty (\$250) dollars for a second offense and a fine in the amount of five hundred (\$500) dollars for a third offense and each subsequent offense thereafter.
- (2) The Department of Health shall publicly notify the citizens of Erie County, at periodic intervals, of any fines issued by the Department including the name of the individual or business fined, their address and the number and amount of fines assessed.

Section 7: Rules and Regulations.

a. The Commissioner of the Erie County Department of Health may promulgate such rules and regulations as necessary to carry out the purposes of this local law, provided that the Legislature, by simple majority, has not voted to disapprove such rule or regulation within sixty (60) days from the Commissioner's written notice to the Legislature that such rule or regulation has been promulgated.

Section 8: Establishment of a Review Committee.

- a. No later than January 20, 2004, the Chairman of the Erie County Legislature shall appoint a committee to review this local law.
- b. The review committee shall consist of representation from interested groups, the Erie County Legislature and officials of the Erie County Department of Health.
- c. The review committee shall produce a report to the Chairman concerning this local law within ninety (90) days of appointment.

Section 9: Severability.

- a. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10: Effective Date.

- a. This local law shall take effect immediately upon its filing with the Secretary of State pursuant to Section 27 of the New York Municipal Home Rule Law.

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